

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	NO. 3-04-CR-0052-K
	§	NO. 3-06-CV-1778-K
KENNETH E. PERKINS	§	
	§	
Defendant.	§	

**FINDINGS AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE**

Defendant Kenneth E. Perkins has filed a motion to correct, vacate, or set aside his 110-month sentence on federal gun charges. In his sole ground for relief, defendant contends that he received ineffective assistance of counsel because his attorney failed to appeal his conviction. After conducting a preliminary review of the motion, the court scheduled an evidentiary hearing and appointed counsel to represent defendant. At the conclusion of the hearing held on March 8, 2007, the government conceded that defendant is entitled to an out-of-time appeal. Accordingly, the magistrate judge recommends that defendant's motion be granted.

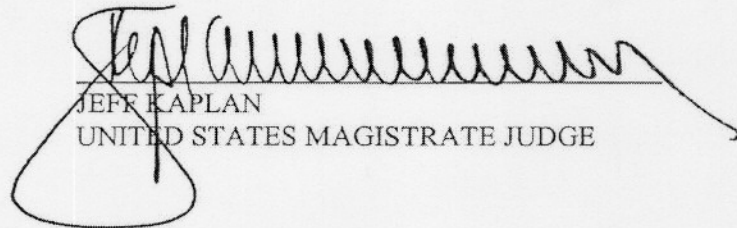
**RECOMMENDATION**

Defendant's motion to correct, vacate, or set aside his sentence should be granted. Defendant should be granted an out-of-time appeal.

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party may file written objections to the recommendation within 10 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). The failure to file written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon

grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: March 15, 2007.



JEFF KAPLAN  
UNITED STATES MAGISTRATE JUDGE